

Message Text

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FM AMEMBASSY BONN

TO SECSTATE WASHDC 5854

INFO USMISSION USBERLIN

USMISSION NATO BRUSSELS

AMEMBASSY BERLIN

AMEMBASSY LONDON

AMEMBASSY PARIS

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E.O. 11652: GDS

TAGS: PFOR, GW, GE, US, UK, FR, UR

SUBJECT: INNER-GERMAN BOUNDARY -- QUADRIPARTITE

RESPONSIBILITIES

SUMMARY: AS MARKING OF INNER-GERMAN BOUNDARY BY FRG-GDR BORDER COMMISSION NEARS COMPLETION, AN OPPOSITION BUNDESTAG MEMBER HAS CALLED FOR QUADRIPARTITE APPROVAL OF WORK OF COMMISSION. STATED OBJECTIVE OF DEMAND IS TO ENSURE THAT THE FOUR RETAIN FINAL RESPONSIBILITY FOR BORDERS OF GERMANY AND THUS TO MAINTAIN PROVISIONAL NATURE OF THE INNER GERMAN BOUNDARY. THE SCHMIDT GOVERNMENT, PARTICULARLY WARY OF GIVING THE OPPOSITION AN ISSUE IN AN ELECTION YEAR, IS REPORTEDLY NOW STUDYING THE MATTER AND IT IS POSSIBLE THAT BONN MAY ASK THE ALLIES TO BECOME INVOLVED. IF SUCH A REQUEST WERE MADE, WE BELIEVE WE SHOULD BE IN A POSITION TO RESPOND QUICKLY, BUT AT MOST WITH A TRIPARTITE STATEMENT ALONG LINES THAT QUADRIPARTITE RESPONSIBILITIES ARE INDEED INVOLVED IN INNER-GERMAN BOUNDARY, BUT THAT WORK OF

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BORDER COMMISSION HAS NOT AFFECTED THEM. REQUEST

GUIDANCE. END SUMMARY.

1. APPARENTLY RESPONDING TO INFORMATION THAT THE FRG-GDR BORDER COMMISSION (BC) HAS REACHED AGREEMENT ON MARKING OF OVER 90 PER CENT OF THE INNER-GERMAN BOUNDARY (IGB), CDU BUNDESTAG MEMBER ALOIS MERTES HAS DEMANDED THAT AGREEMENT OF THE BIG FOUR BE GIVEN TO THE RESULTS OF THE BC'S WORK. (IT WILL BE RECALLED THAT THE COMMISSION WAS ESTABLISHED BY PROTOCOL NOTE 1 TO THE FRG/GDR TREATY ON THE BASIS OF RELATIONS FOR THE PURPOSES -- AS SPELLED OUT IN THE PROTOCOL NOTE AND IN A JOINT STATEMENT -- OF MARKING THE IGB AS DETERMINED BY THE LONDON PROTOCOL AND SUBSEQUENT ARRANGEMENTS OF THE OCCUPYING POWERS AND OF WORKING TO ACHIEVE PRACTICAL RESOLUTIONS TO "INCONVENIENCES" CAUSED BY THE EXISTING COURSE OF THE BOUNDARY.)

2. IN A LONG ARTICLE RELEASED JANUARY 13 BY THE CDU/CSU PRESS SERVICE, MERTES SAYS THE LEGAL QUALITY OF THE IGB IS AN EXPRESSION OF QRRS OF THE FOUR POWERS FOR GERMANY AS A WHOLE. THIS EXPRESSION OF QRRS AFFIRMS THE PROVISIONAL NATURE OF THE DIVISION OF GERMANY. THIS SITUATION MUST NOT BE BROUGHT INTO QUESTION BY ACTS OF THE BC (OR OF THE FRG AS A RESULT OF THE COMMISSION'S WORK). BONN MUST THEREFORE OBTAIN THE AGREEMENT OF THE FOUR POWERS TO THE BC'S WORK. MERTES BOLSTERS HIS ARGUMENT BY RECALLING THAT THE JULY 31, 1973 DECISION OF THE FRG FEDERAL CONSTITUTIONAL COURT (FCC) IN THE CASE RE THE TREATY ON THE BASIS OF RELATIONS STATES THAT NO CONSTITUTIONAL ORGANS OF THE FRG MAY GIVE UP THE REUNIFICATION OF GERMANY AS A POLITICAL GOAL AND THAT ALL OF THESE ORGANS ARE DUTY BOUND TO WORK FOR THIS GOAL. MERTES CLOSES BY SAYING THE OPPOSITION WILL BE CONSIDERING WHAT LEGAL STEPS MAY BE NECESSARY TO PROTECT GERMAN INTERESTS IN THIS MATTER.

3. FRENCH BONN GROUP REP (BOISSIEU) HAS INFORMED US AND BRITISH THAT FRG REP (LUECKING) TOLD HIM THAT CHANCELLOR SCHMIDT HAS ISSUED FOLLOWING INSTRUCTIONS AS RESULT OF MERTES ARTICLE AND PRESS PLAY WHICH ENSUED:

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-- A) FRG DELEGATION IN BORDER COMMISSION WILL LIMIT FURTHER WORK TO COMPLETION OF MARKING OF LAND BOUNDARY AND WILL NOT CONTINUE EFFORTS ON ELBE PROBLEM (SEE OFFICIAL-INFORMAL HUGHES-RUECKERT LETTER OF FEB. 27, 1975);

-- B) IF GDR PRESSES FOR CONTINUATION OF

NEGOTIATIONS ON ELBE BOUNDARY, HOWEVER, BONN WILL
RECONSIDER; AND

-- C) THE FOREIGN OFFICE MUST STUDY ON URGENT
BASIS THE LEGAL SITUATION ON THE IGB AND RE THE
POSSIBILITIES OF QUADRIPARTITE OR TRIPARTITE INVOLVEMENT.

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4. BOISSIEU SAID ALLIES HAD NOT YET BEEN ASKED ANYTHING
BY FRG AND THEREFORE NEED NOT SAY ANYTHING NOW.
HOWEVER, HE THOUGHT WE MIGHT BE APPROACHED BY FRG AND
MUST THEREFORE BE PREPARED. BOISSIEU SAW THE ALLIED
POSITION AS FOLLOWS:

-- A) NOT REAIISTIC TO EXPECT SOVIET INVOLVEMENT
IN MATTER;

--B) EVEN IF ALLIES NOT WISH TO BECOME INVOLVED WE
MAY COME UNDER FRG PRESSURE AT LEAST TO DO SO
INDIRECTLY, FOR EXAMPLE BY ALLOWING FRG TO MAKE STATE-
MENT RE ALLIED POSITION; AND

-- C) IT PERHAPS NOT ADVISABLE TO AVOID INVOLVE-
MENT IF ASKED SINCE MATTER DOES INVOLVE ALLIED RESERVED
RIGHTS (ARTICLE 1 OF THE 1954 PARIS CONVENTION STATES:
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"LEGISLATION BY WHICH THE PROVISIONAL BOUNDARIES OF THE
FEDERAL REPUBLIC HAVE BEEN ESTABLISHED, OR WHICH IS
REQUIRED TO BE MAINTAINED IN FORCE BY OTHER PROVISIONS
OF THE CONVENTION ON RELATIONS BETWEEN THE THREE POWERS
AND THE FEDERAL REPUBLIC OF GERMANY OR ANY OF THE
RELATED CONVENTIONS, MAY ONLY BE AMENDED OR REPEALED
WITH THE CONSENT OF THE THREE POWERS.").

5. BOISSIEU PROPOSED FOLLOWING AS ALLIED LINE AND
SUGGESTED WE ALL REQUEST GUIDANCE:

-- A) ALLIED RIGHTS AND RESPONSIBILITIES FOR
FRONTIERS OF GERMANY REMAIN;

-- B) CERTAIN COMPETENCIES HAVE BEEN DELEGATED
AND ARE BEING EXERCISED BY THE BORDER COMMISSION;

-- C) THE WORK OF THE BC, AS STATED IN THE
PROTOCOL NOTE TO THE FRG-GDR TREATY AND IN THE FRG-GDR
JOINT STATEMENT, IS ONLY TO MARK THE BORDER ON BASIS OF
QUADRIPARTITE AGREEMENTS. NEITHER QRR NOR THE
SETTLEMENTS CONVENTION ARE THEREFORE AFFECTED; AND

-- D) ALLIED (OR QUADRIPARTITE) INVOLVEMENT RE
RESULTS OF BC'S WORK IS THUS NOT REQUIRED.

6. AFTER DISCUSSION OF MATTER, TRIPARTITE REPS AGREED
GENERALLY ON FOLLOWING:

-- A) IT COULD BE EXPECTED THAT BONN WILL INDEED
TRY TO SOFT-PEDAL BORDER COMMISSION WORK, ESPECIALLY
VERY DIFFICULT PROBLEM OF ELBE BOUNDARY, BETWEEN NOW
AND ELECTION IN OCTOBER;

-- B) THE DEMAND RAISED BY MERTES MAY NEVERTHELESS
COME TO A HEAD AND BONN MAY COME TO THE ALLIES;

-- C) SINCE THE INNER-GERMAN BOUNDARY DOES INVOLVE
ALLIED RIGHTS AND RESPONSIBILITIES -- REGARDING WHICH WE
SHOULD NOT BE SEEN TO BE DUBIOUS -- THE ALLIES SHOULD

RESPOND QUICKLY IN POSITIVE WAY TO POSSIBLE FRG REQUEST;
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-- D) A GOOD COURSE WOULD PERHAPS BE FOR ALLIES
TO WORK UP STATEMENT ON LINES OF BOISSIEU'S PRESENTATION
(PARA 5, ABOVE) WHICH THE FRG COULD USE AS EXPRESSION OF

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ALLIED POSITION; AND

-- E) GUIDANCE FROM CAPITALS WOULD BE SOUGHT.

7. COMMENT: THE WORK OF THE BORDER COMMISSION HAS

PROCEEDED SMOOTHLY WITHOUT GREAT PUBLIC INTEREST IN FRG
EXCEPT FOR VERY TRICKY ELBE PROBLEM. NOW, HOWEVER,
CONFLUENCE OF ELECTION YEAR AND WINDING UP OF
COMMISSION TASKS MEANS BIGGER PROBLEMS FOR THE GOVERN-
MENT THAN OTHERWISE WOULD HAVE BEEN THE CASE: THE
OPPOSITION CAN BE EXPECTED TO POUND AWAY AT ANY ACT OF
FRG WHICH (A) CAN BE CHARACTERIZED AS GIVING TERRITORY
TO THE GDR (AS IN ELBE CASE) OR (B) CAN BE
CHARACTERIZED AS UNDERMINING THE PROVISIONAL NATURE OF
THE BOUNDARY AND THUS OF THE DIVISION OF GERMANY (SUCH
AS AN FRG-GDR TREATY-TYPE AGREEMENT ON THE BOUNDARY
MARKING).

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8. IT SEEMS TO US THAT MERTES' AIM IS NOT REALLY TO GET
THE FOUR POWERS INVOLVED -- SINCE HE SURELY KNOWS THIS
IS IMPOSSIBLE -- BUT INSTEAD TO MAKE IT POLITICALLY
IMPOSSIBLE FOR BONN TO CONCLUDE ANY "TREATY-TYPE"
AGREEMENTS WITH THE GDR ON THE COURSE OF THE BOUNDARY
(FINAL FRG/GDR APPROVAL ON THE WORK OF THE COMMISSION
WILL NOT BE A TREATY). BY DRAWING PUBLIC ATTENTION TO
THE BOUNDARY, OF COURSE, HE ALSO MAKES IT MORE DIFFICULT
FOR BONN TO CONCLUDE THE DEAL WE UNDERSTAND IT IS
SEEKING WITH THE GDR ON THE ELBE: ACCEPT THE
BOUNDARY AS THE MIDDLE OF THE RIVER IF EAST BERLIN WILL
GIVE GUARANTEES REGARDING COMMERCIAL RIVER TRAFFIC,
WATER SPORTS, AND FISHING, AND GIVE AN UNDERTAKING NOT
TO USE FIREARMS ON THE ENTIRE WIDTH OF THE RIVER.
END COMMENT.

9. ACTION REQUESTED: AUTHORITY TO PROCEED TRIPARTITELY
TO DRAFT STATEMENT ON LINES NOTED PARA 5 ABOVE WHICH
MIGHT BE USED BY FRG GOVERNMENT. TRIPARTITE DRAFT
WOULD BE SUBMITTED TO AUTHORITIES FOR FINAL APPROVAL.
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